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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,857	02/08/2006	German Spangenberg	FREE.P-007	4572

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EXAMINER

KUBELIK, ANNE R

ART UNIT	PAPER NUMBER
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1638

MAIL DATE	DELIVERY MODE
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08/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/552,857	Applicant(s) SPANGENBERG ET AL.	
	Examiner Anne R. Kubelik	Art Unit 1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 62-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 70 is/are objected to.
- 8) ☒ Claim(s) 62-69, 71-76 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The restriction mailed 29 January 2009 is withdrawn in favor of the restriction below:

Claim Objections

2. Claim 70 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

Election/Restrictions

3. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 62-76 (all in part), drawn to a nucleic acid construct encoding SEQ ID NO:2 and 10 and optionally 12, constructs comprising it, plants, plant cells and seed comprising the constructs, and a method of making the plants.

Group II, claims 62-76 (all in part), drawn to a nucleic acid construct encoding SEQ ID NO:2 and 10 and optionally 14, constructs comprising it, plants, plant cells and seed comprising the constructs, and a method of making the plants.

Group III, claims 62-76 (all in part), drawn to a nucleic acid construct encoding SEQ ID NO:2 and 10 and optionally 16, constructs comprising it, plants, plant cells and seed comprising the constructs, and a method of making the plants.

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Group IV, claims 62-76 (all in part), drawn to a nucleic acid construct encoding SEQ ID NO:4 and 10 and optionally 12, constructs comprising it, plants, plant cells and seed comprising the constructs, and a method of making the plants.

Group V, claims 62-76 (all in part), drawn to a nucleic acid construct encoding SEQ ID NO:4 and 10 and optionally 14, constructs comprising it, plants, plant cells and seed comprising the constructs, and a method of making the plants.

Group VI, claims 62-76 (all in part), drawn to a nucleic acid construct encoding SEQ ID NO:4 and 10 and optionally 16, constructs comprising it, plants, plant cells and seed comprising the constructs, and a method of making the plants.

Group VII, claims 62-76 (all in part), drawn to a nucleic acid construct encoding SEQ ID NO:6 and 10 and optionally 12, constructs comprising it, plants, plant cells and seed comprising the constructs, and a method of making the plants.

Group VIII, claims 62-76 (all in part), drawn to a nucleic acid construct encoding SEQ ID NO:6 and 10 and optionally 14, constructs comprising it, plants, plant cells and seed comprising the constructs, and a method of making the plants.

Group IX, claims 62-76 (all in part), drawn to a nucleic acid construct encoding SEQ ID NO:6 and 10 and optionally 16, constructs comprising it, plants, plant cells and seed comprising the constructs, and a method of making the plants.

Group X, claims 62-76 (all in part), drawn to a nucleic acid construct encoding SEQ ID NO:8 and 10 and optionally 12, constructs comprising it, plants, plant cells and seed comprising the constructs, and a method of making the plants.

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Group XI, claims 62-76 (all in part), drawn to a nucleic acid construct encoding SEQ ID NO:8 and 10 and optionally 14, constructs comprising it, plants, plant cells and seed comprising the constructs, and a method of making the plants.

Group XII, claims 62-76 (all in part), drawn to a nucleic acid construct encoding SEQ ID NO:8 and 10 and optionally 16, constructs comprising it, plants, plant cells and seed comprising the constructs, and a method of making the plants.

The inventions listed as Groups I-XII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The technical feature linking Groups I-XII appears to be expression of both nucleic acid encoding a chalone synthase and one encoding a dihydroflavonol-4-reductase, or antisense thereof, in a plant.

However, Suzuki et al (2000, Mol. Breed. 6:239-246) teach *Torenia* plants that have been transformed with antisense constructs of chalone synthase and dihydroflavonol-4-reductase (pg 241, right column, paragraph 1). The nucleic acids used are “variants” of the instantly recited sequences.

Therefore, the technical feature linking Groups I-XII is not special and the Groups are not so linked under PCR Rule 13.1.

Applicant is reminded that a determination regarding unity of invention is made without regard to whether a group of inventions is claimed in separate claims or as alternatives within a single claim (MPEP 1893(d), last paragraph).

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Applicant is advised that for the reply to this requirement to be complete, it must include (i) an election of an invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out the supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be present at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of the right petition under 37 CFR 1.144.

Should Applicant traverse on the ground that the inventions are not patently distinct, Applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention(s).

If claims are added after the election, Applicant must indicate which of these claims are readable on the elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne R. Kubelik, Ph.D., whose telephone number is (571) 272-0801. The examiner can normally be reached Monday through Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975.

The central fax number for official correspondence is (571) 273-8300.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

August 11, 2009

/Anne R. Kubelik/

Primary Examiner, Art Unit 1638